

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LITAN.,

Plaintiff,

v.

ACTING COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 3:24-cv-05778-TLF

ORDER REVERSING AND REMANDING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff filed this action under 42 U.S.C. § 405(g) for judicial review of defendant's denial of plaintiff's application for supplemental security income ("SSI"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. Dkt. 2. Plaintiff challenges the ALJ's decision finding that plaintiff was not disabled. Dkt. 4, Complaint.

On July 12, 2021, plaintiff filed an application for child benefits, and SSI, alleging a disability onset date of March 3, 1993. On March 13, 2024, a hearing was conducted by ALJ Evangeline Mariano-Jackson. AR 42-66. At the hearing, plaintiff amended the onset date to May 12, 2021, through her representative, and withdrew the application for child benefits. AR 18, 47-49. On April 9, 2024, the ALJ issued a decision finding plaintiff did not meet the criteria for disability benefits. 15-41.

The ALJ determined plaintiff had the following severe impairments: somatic symptom syndrome, chronic pain, left cubital tunnel syndrome, mild scoliosis, posttraumatic stress disorder (PTSD), generalized anxiety disorder, major depression, and attention deficit hyperactivity disorder (ADHD). AR 21. The ALJ determined plaintiff had the residual functional capacity (“RFC”) to perform light work as defined in 20 C.F.R. 404.1567(b) and 416.967(b) with the following additional limitations:

She can stand and/or walk for 6 hours in an 8-hour day and sit for 6 hours in an 8-hour workday; can occasionally climb ladders, ropes, and scaffolds; can frequently but not constantly reach overhead with bilateral upper extremities; can never be exposed to vibration; can never work at unprotected heights or around moving mechanical parts or heavy machinery; can understand, remember, and carry out simple, routine, and repetitive tasks involving only simple work-related decisions and occasional decision-making changes in the work setting; can tolerate occasional brief and superficial interaction with coworkers; and is limited to performing work requiring no public contact.

AR 24. The ALJ determined plaintiff could perform the requirements of the following representative occupations: Marker (DOT 209.587-034, light, SVP 2), Router (DOT 222.587-038, light, SVP2), Collator operator (DOT 208.685-010, light, SVP 2). AR 34.

STANDARD

The Court may set aside the Commissioner's denial of Social Security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017) (internal citations omitted). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted). The Court must consider the administrative record as a whole. *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014). The Court also must weigh both the evidence that supports and evidence that

1 does not support the ALJ's conclusion. *Id.* The Court may not affirm the decision of the
2 ALJ for a reason upon which the ALJ did not rely. *Id.* Rather, only the reasons identified
3 by the ALJ are considered in the scope of the Court's review. *Id.*

4 DISCUSSION

5 **1. Medical evidence.**

6 Plaintiff argues that the ALJ erred in evaluating the medical opinions of Dr. Alysa
7 Ruddell, Ph.D. and Dr. Renee Eisenhauer, Ph.D. Dkt. 9 at 3-9.

8 The Commissioner "will not defer or give any specific evidentiary weight . . . to
9 any medical opinion(s) . . . including those from [the claimant's] medical sources." 20
10 C.F.R. §§ 404.1520c(a), 416.920c(a). The ALJ must nonetheless explain with specificity
11 how he or she considered the factors of supportability and consistency in evaluating the
12 medical opinions. 20 C.F.R. §§ 404.1520c(a)-(b), 416.920c(a)-(b).

13 Under the 2017 regulations,

14 an ALJ cannot reject an examining or treating doctor's opinion as
15 unsupported or inconsistent without providing an explanation supported by
16 substantial evidence. The agency must "articulate ... how persuasive" it
17 finds "all of the medical opinions" from each doctor or other source, 20
18 C.F.R. § 404.1520c(b), and "explain how [it] considered the supportability
19 and consistency factors" in reaching these findings, *id.* § 404.1520c(b)(2).

Id.

- 20 • Dr. Alysa Ruddell, Ph.D. and Dr. Renee Eisenhauer, Ph.D., 2021 opinions

21 On February 25, 2021, Dr. Ruddell examined plaintiff and completed a
22 psychological/ psychiatric evaluation. AR 481-85. She diagnosed plaintiff with anxiety
23 and depression with a severity rating of four (marked). AR 482. She also assessed
24 PTSD and substance use: cannabis. *Id.* She completed a medical source statement and
25 opined marked limitations in the following basic work activities: learn new tasks, adapt

1 to changes in a routine work setting, complete a normal workday and work week without
2 interruptions from psychologically based symptoms, and set realistic goals and plan
3 independently. AR 483.

4 She opined moderate limitations in every other basic work activity and assigned
5 an overall severity rating of marked. *Id.* She conducted a mental status exam. AR 484.

6 The ALJ determined that Dr. Ruddell's opinion was not persuasive because it
7 was expressed in a check-box format, the limitations were not well supported or
8 explained, or consistent with mental status exam findings and other evidence of record.
9 AR 32

10 As for the ALJ's determination that Dr. Ruddell's opinion was unpersuasive
11 because it was a check-box format, a check-box form may be used by medical
12 professionals and should only be discounted if the form is unsupported, or unexplained
13 and not clear. *Garrison v. Colvin*, 759 F.3d 995, 1013 (9th Cir. 2014)).

14 Here Dr. Ruddell conducted a clinical interview, indicated an
15 assessment/diagnosis with explanations, conducted a mental status exam and noted
16 explanations, and administered an evaluation questionnaire. AR 481-85. This is not
17 simply a check-box evaluation. The ALJ's decision on this point is not supported by
18 substantial evidence.

19 As for the ALJ's second reason, an ALJ may reject an opinion for internal
20 inconsistency. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001). Yet the ALJ
21 must consider the context of the opinion in the record, including observation and
22 treatment notes. *Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th Cir. 2014).

1 When an ALJ seeks to discredit a medical opinion, they must explain why their
2 own interpretations, rather than those of the doctors, are correct. *Reddick v. Chater*, 157
3 F.3d 715, 725 (9th Cir. 1998) (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.
4 1988)).

5 The ALJ found Dr. Ruddell's opinion that plaintiff's attitude and behavior were
6 within normal limits to be inconsistent with her notation that plaintiff was challenging to
7 interview and provided vague answers and resented clarifying questions. AR 32. The
8 ALJ summarized the examination as follows:

9 The claimant recalled 3 of 3 words on a second presentation and again after a 5-
10 minute delay, but none at the end of the exam. Her performance on digit span
11 was abnormal or alternatively raised "concerns about effort." Directions to
12 perform serial 3 subtractions were provided twice and the claimant stopped
13 during the task stating that she could not do it, but completed it after being told to
14 count on fingers. Dr. Ruddell noted the claimant's subjective reports regarding
15 her memory and attention, which are not of significant value on mental status
16 exam.

17 *Id.* However, the ALJ did not explain how these determinations factored into her
18 evaluation of Dr. Ruddell's opinion. Without explanation as to how these findings were
19 inconsistent with the opined limitations, it appears that the ALJ improperly substituted
20 her own opinion for that of Dr. Ruddell's. See *Trevizo v. Berryhill*, 871 F.3d 664, 683
21 (9th Cir. 2017) (holding that an ALJ improperly rejected an informed medical opinion
22 and substituted their own judgment for that of the doctor's).

23 Inconsistency with the medical evidence is a valid reason to reject a medical
24 opinion. See *Tommasetti v. Astrue*, 53 F.3d 1035, 1042 (9th Cir. 2008). Yet, the ALJ
25 failed to explain how the medical evidence was inconsistent with Dr. Ruddell's opinion.
See *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) ("the agency [must] set
forth the reasoning behind its decisions in a way that allows for meaningful review"). On

1 March 4, 2021, Dr. Eisenhauer reviewed Dr. Ruddell's evaluation and opined the same
2 limitations. AR 1042-44. The ALJ also rejected Dr. Eisenhauer's opinion for
3 inconsistency with the medical record, and failed to discuss why the opinion was
4 inconsistent, or identify those aspects of the medical record that undermined Dr.
5 Eisenhauer's opinions. AR 32. Accordingly, the ALJ failed to provide any valid reasons
6 for rejecting the 2021 opinions of Dr. Ruddell and Dr. Eisenhauer.

- 7 • Dr. Alysa Ruddell, Ph.D., 2023 opinion

8 On January 12, 2023, Dr. Ruddell examined plaintiff again and completed a
9 psychological/ psychiatric evaluation. AR 1035-39. She again diagnosed plaintiff with
10 anxiety, at a severity rating of four and depression with a severity rating of three. AR
11 1036. She also assessed somatic symptom disorder: chronic pain, intellectual
12 disabilities: borderline intellectual functioning, and substance abuse: cannabis. *Id.* She
13 opined marked limitations in the following basic work activities: learn new tasks, adapt
14 to changes in a routine work setting, maintain appropriate behavior in a work setting,
15 complete a normal workday and work week without interruptions from psychologically
16 based symptoms, and set realistic goals and plan independently. AR 1037.

17 She opined none or mild limitations in the ability to understand, remember, and
18 persist in tasks by following very short and simple instructions, moderate limitations in
19 every other basic work activity, and an overall severity rating of marked. *Id.*

20 She opined plaintiff's mood was anxious; she was not oriented to time; her
21 memory was not within normal limits, she recalled zero of three words in five minutes;
22 her performance was not normal, her performance on the naming task was not normal

1 and the examiner was concerned about effort; all other categories were within normal
2 limits. AR 1038-39.

3 The ALJ determined that Dr. Ruddell's 2023 opinion was not persuasive because
4 it was not entirely well-supported or consistent with the record, the findings did not
5 support the marked limitations in the ability to maintain appropriate behavior, and Dr.
6 Eisenhauer found that marked limitations for new learning were not established and
7 moderate limitations were better established. AR 32.

8 The ALJ again summarized Dr. Ruddell's opinion without explaining how the
9 summary supported her conclusions:

10 Dr. Ruddell noted that the claimant became irritated when asked to explain things
11 and her mood was anxious and irascible, which is consistent with some
12 limitations in social interaction that are accounted for in the residual functional
13 capacity assessment, but the findings do not support marked limitations in the
14 ability to maintain appropriate behavior. In addition, Dr. Ruddell noted that the
15 claimant was able to participate in the conversation and her thought process was
linear and intact. Contrary to the 2021 evaluation, the claimant recalled 0 of 3
words in 5 minutes and recalled 2 at the end of the interview; her performance on
digit span was normal. The claimant performed simple directions and spelled a
word correctly forward and backward, but her performance on naming task was
abnormal and Dr. Ruddell "was concerned about effort."

16 AR 32. Because the ALJ did not explain how these examination findings were
17 inconsistent with the limitations opined by Dr. Ruddell, this reason for discounting her
18 opinion is legally invalid, vague, and not reviewable by this Court. See *Brown-Hunter v.*
19 *Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) ("the agency [must] set forth the reasoning
20 behind its decisions in a way that allows for meaningful review").

21 As for the statement that Dr. Eisenhauer determined that moderate limitations for
22 complex learning were better established, the ALJ provides no reason as to why Dr.
23 Eisenhauer's opinion was more persuasive than Dr. Ruddell's. See *Garrison v. Colvin*,

1 759 F.3d 995, 1012-13 (9th Cir. 2014) (“[A]n ALJ errs when he rejects a medical opinion
2 or assigns it little weight while doing nothing more than ignoring it, asserting without
3 explanation that another medical opinion is more persuasive, or criticizing it with
4 boilerplate language that fails to offer a substantive basis for his conclusion”).

5 Therefore, the ALJ failed to provide a proper basis for discounting Dr. Ruddell’s
6 2023 opinion.

7 • Harmless error

8 An error that is inconsequential to the non-disability determination is harmless.

9 *Stout v. v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006). If the errors
10 of the ALJ result in a residual functional capacity (RFC) that does not include relevant
11 work-related limitations, the RFC is deficient and the error is not harmless. *Id.* at 1052,
12 1054; *see also, Carmickle v. Comm'r. Spc. Sec. Admin.*, 533 F.3d 1155, 1160 (9th Cir.
13 2008); *Embrey v. Bowen*, 849 F.2d 418, 422-423 (9th Cir. 1988); *Stramol-Spirz v. Saul*,
14 848 Fed. Appx. 715, 718 (9th Cir. 2021) (unpublished).

15 Here the vocational expert testified that an individual who would be absent two to
16 three days on a consistent basis due to psychological symptoms that preclude the
17 ability to complete an eight-hour workday, and 40-hour work week, would not be able to
18 perform any of the jobs identified. AR 65. He also testified that an individual who would
19 be off-task for at least 20 percent of an eight-hour day due to psychological symptoms
20 that cause lapses in concentration could not perform any of the jobs identified. *Id.*

21 If the 2021 and 2023 opinions of Dr. Ruddell and the 2021 opinion of Dr.
22 Eisenhauer had been given legally and factually supported evaluation, the ALJ may

1 have decided on a more restrictive RFC. Therefore, the errors in crediting these
2 opinions were not harmless.

3 **2. Plaintiff's statements regarding symptoms and limitations**

4 Plaintiff argues that the ALJ failed to provide clear and convincing reasons for
5 discounting her testimony regarding her mental health symptoms and limitations. Dkt. 9
6 at 9-15.

7 The ALJ's determinations regarding a claimant's statements about limitations
8 "must be supported by specific, cogent reasons." *Reddick v. Chater*, 157 F.3d 715, 722
9 (9th Cir. 1998) (*citing Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)). In
10 assessing a Plaintiff's credibility, the ALJ must determine whether Plaintiff has
11 presented objective medical evidence of an underlying impairment. If such evidence is
12 present and there is no evidence of malingering, the ALJ can only reject plaintiff's
13 testimony regarding the severity of his symptoms for specific, clear and convincing
14 reasons. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (*citing Lingenfelter v.*
15 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)).

16 Plaintiff testified that anxiety and PTSD symptoms are heightened the further she
17 is from home; it impacts her ability to think clearly and control over her symptoms is
18 decreased. AR 52. She testified that she takes an antianxiety medication to reduce the
19 frequency of anxiety attacks, a stimulant for ADHD, and a sleep medication for
20 insomnia. AR 53. She testified that these medications marginally improve her ability to
21 think clearly but she still has great difficulty articulating. *Id.* She stated that PTSD and
22 anxiety cause her to disassociate and not focus on what is happening in the moment
23 and when she realizes she is not focusing, she panics. AR 54.

1 She testified that she has never lived independently, the roommates she lives
2 with are responsible for making sure that rent is paid, and she does not have friends
3 other than her roommates. AR 57. In a typical week she goes to the grocery store with
4 her roommates, she doesn't drive, and she does not leave the house on her own. AR
5 58. A typical day would include being on the computer and listening to music. AR 59.
6 When she plays games, it takes her longer to do things than it would for others,
7 because she gets overwhelmed with steps that need to be taken. *Id.* Depression makes
8 her unmotivated and tired; this adds to her insomnia. AR 60.

9 The ALJ determined that plaintiff's medically determinable impairments could
10 reasonably be expected to cause some of her symptoms but her statements concerning
11 the intensity, persistence, and limiting effects, of these symptoms were not entirely
12 consistent with the medical evidence and other evidence in the record. AR 26.

13 The ALJ determined that records from May 2021 to August 2022 "do not contain
14 mental status exam findings consistent with significant difficulties in memory or
15 concentration and reflect generally appropriate behavior and interactions." AR 28. She
16 found that records after August 2022 document persistent symptoms with occasions of
17 irritable, anxious, or depressed mood and some tangentiality but largely reflect intact
18 memory and concentration with appropriate behavior. AR 29.

19 The ALJ discussed records that were consistent with the RFC, rather than those
20 that were inconsistent with plaintiff's testimony. See *Brown-Hunter v. Colvin*, 806 F.3d
21 487, 493-94 (9th Cir. 2015); *Ferguson v. O'Malley*, 95 F.4th 1194, 1200 (9th Cir. 2024)
22 ("[T]o satisfies the substantial evidence standard, the ALJ must...explain why the

1 medical evidence is *inconsistent* with the claimant's subjective symptom testimony.")
2 (emphasis in original).

3 To the extent the ALJ provided explanations of inconsistency based on plaintiff's
4 testimony, they were not clear and convincing. The ALJ wrote that mental status
5 examinations were inconsistent with plaintiff's statements about memory, concentration,
6 and appropriate behavior and interactions. AR 28.

7 "Contradiction with the medical record is a sufficient basis for rejecting the
8 claimant's subjective testimony." *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d
9 1155, 1161 (9th Cir. 2008) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th
10 Cir.1995)). But an ALJ may not reject a claimant's subjective symptom testimony "solely
11 on a lack of objective medical evidence to fully corroborate the alleged severity of pain."
12 *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991); *Bynes v. Shalala*, 60 F.3d 639,
13 641-42 (9th Cir. 1995) (applying rule to subjective complaints other than pain).
14 Treatment records cannot be cherry-picked; the ALJ must consider a particular record
15 of treatment in light of the overall diagnostic record. *Ghanim v. Colvin*, 763 F.3d 1154,
16 1164 (9th Cir. 2014).

17 Here the ALJ acknowledged that plaintiff presented as anxious or irritable on
18 occasion but also cited records that showed plaintiff to be cooperative, calm, and
19 pleasant. See AR 23 (citing 751-52, 1125, 1143, 1146, 481-85, 506, 1022-25, 1045-49,
20 1105-06, 1134, 1143, 1146, 1168-69). The ALJ also discounted plaintiff's testimony
21 because mental status examinations did not show significant difficulties in memory,
22 however, plaintiff did not testify that she is unable to work due to deficits in her memory.
23 See AR 28.

1 Although there were instances of mental status exams that were inconsistent
2 with plaintiff's testimony, there were also instances where plaintiff's mental status
3 exams were consistent with her reported symptoms. Throughout the period at issue,
4 providers noted her that her mood was depressed, anxious, irritable, guarded, or
5 distressed. AR 769, 788, 1106, 1007, 1125, 1133, 1152, 1169. She spoke in a loud and
6 fast tone. AR 769, 771, 773, 779, 989, 994, 998, 1002, 1007. She was distracted,
7 preoccupied, or less actively engaged. AR 776, 777, 791, 1152, 1176, 1169, 1186.
8 Impairments were noted in her thought process, and at times her thought process was
9 tangential. AR 786, 989, 994, 998, 1004, 1007. Her insight was noted as poor. 1169.

10 It appears that the ALJ failed to take into account the waxing and waning nature
11 of mental health symptoms. See *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014)
12 (claimants who suffer from mental conditions have symptoms that wax and wane, with
13 downward cycles, cycles of improvement, and mixed results from treatment).

14 Therefore, this was not a clear and convincing reason for discounting plaintiff's
15 testimony.

16 The ALJ also wrote that plaintiff "was able to go to the post office, has attended
17 appointments alone on occasion, and said that she spent a period of time alone when
18 her roommates were out of town," which the ALJ contrasted with plaintiff's testimony
19 that she is unable to leave the house alone. AR 23. An ALJ may discount a claimant's
20 testimony based on daily activities that either contradict their testimony or that meet the
21 threshold for transferable work skills. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007).

22 Here there is no context to the note where her provider wrote that plaintiff was
23 able to take her Social Security paperwork to the post office and it is therefore unclear
24

1 whether it is inconsistent with testimony that she could not leave the house alone. AR
2 768. Similarly, the note about being on her own only states that "I've been kinds [sic] on
3 my own for 3 weeks. They work at the shipyard. They are in California." AR 1192. There
4 is no context to whether plaintiff left the house on her own while she was alone.
5 Therefore, this was not a clear and convincing reason for discounting plaintiff's
6 testimony.

7 The ALJ also mentioned activities such as playing video games, applying for
8 jobs, working on a GED, living with her boyfriend, German and Gaelic practice, listening
9 to music, and reading. AR 30. However, the ALJ did not contrast these activities with
10 plaintiff's statements and testimony but rather found that they were "not inconsistent
11 with an ability to perform light, simple work with limited simple interaction." *Id.* This is not
12 a clear and convincing reason for discounting plaintiff's testimony. See, *Ferguson v.*
13 *O'Malley*, 95 F.4th 1194, 1200 (9th Cir. 2024) ("[T]o satisfy the substantial evidence
14 standard, the ALJ must...explain why the medical evidence is *inconsistent* with the
15 claimant's subjective symptom testimony.") (emphasis in original).

16 The ALJ also reasoned that plaintiff was not credible because she reported not
17 taking her psychiatric medications. AR 27-28.

18 An inadequately explained failure to follow a prescribed treatment regimen can
19 serve as a valid reason for discounting a claimant's testimony. See Social Security
20 Ruling ("SSR") 16-3p (if an individual fails to follow a prescribed treatment that might
21 improve symptoms, an ALJ may find that the alleged intensity of an individual's
22 symptoms is inconsistent with the record). See also *Fair v. Bowen*, 885 F.2d 597, 603
23 (9th Cir. 1989) ("[A]n unexplained, or inadequately explained, failure to...follow a

1 prescribed course of treatment...can cast doubt on the sincerity of the claimant's pain
2 testimony."). An ALJ must not draw adverse inferences about the plaintiff's failure to
3 seek or comply with treatment unless the ALJ considers the possible reasons they have
4 not sought or complied with treatment. See, *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir.
5 2007) (failure to seek treatment, or comply with treatment, may not be considered as
6 evidence of lack of credibility, if there is a legitimate reason, for example, lack of funds,
7 lack of insurance, adaptations, and whether there is efficacy of medication).

8 Here the ALJ referenced a note where plaintiff reported she stopped taking her
9 psychiatric medications because she was too tired to swallow and it induced too much
10 stress, and another note that plaintiff had not taken her ADHD medication since April
11 because she did not receive the prescription for methylphenidate. AR 27-28. However, it
12 is not clear how this factored into the ALJ's decision or whether the ALJ considered the
13 reasons for plaintiff's noncompliance, as required. See SSR 16-3P. Notes from mental
14 health treatment providers indicate that plaintiff stated she was concerned about
15 efficacy of treatment, had anxiety about taking medication because of trials that resulted
16 in severe side effects, and had difficulty with a new routine. AR 506, 516, 525, 529-530,
17 532, 541, 595, 642, 731, 754, 758, 772, 815, 819, 825, 827.

18 Therefore, the ALJ did not provide any clear and convincing reasons for
19 discounting plaintiff's subjective symptom testimony.

- 20 • Harmless error

21 An error that is inconsequential to the non-disability determination is harmless.
22 *Stout v. v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006). If the errors
23 of the ALJ result in a residual functional capacity (RFC) that does not include relevant
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1 work-related limitations, the RFC is deficient and the error is not harmless. *Id.* at 1052,
 2 1054; see also, *Carmickle v. Comm'r. Spc. Sec. Admin.*, 533 F.3d 1155, 1160 (9th Cir.
 3 2008); *Embrey v. Bowen*, 849 F.2d 418, 422-423 (9th Cir. 1988); *Stramol-Spirz v. Saul*,
 4 848 Fed. Appx. 715, 718 (9th Cir. 2021) (unpublished).

5 Here the vocational expert testified that an individual who would be absent two to
 6 three days on a consistent basis due to psychological symptoms that preclude the
 7 ability to complete an eight-hour workday, and 40-hour work week would not be able to
 8 perform any of the jobs identified. AR 65. He also testified that an individual who would
 9 be off task for at least 20 percent of an eight-hour day due to psychological symptoms
 10 that cause lapses in concentration could not perform any of the jobs identified. *Id.*

11 Had the ALJ credited plaintiff's testimony, it may have resulted in a more
 12 restrictive RFC. Therefore, the errors in evaluating her testimony were not harmless.

13 CONCLUSION

14 Based on the foregoing discussion, the Court concludes the ALJ improperly
 15 determined plaintiff to be not disabled. Therefore, the ALJ's decision is reversed and
 16 remanded for further administrative proceedings. On remand, the Commissioner must
 17 conduct a de novo hearing, allow plaintiff to present additional evidence, re-evaluate the
 18 medical opinions of Dr. Ruddell and the 2021 opinion of Dr. Eisenhauer, and re-
 19 evaluate plaintiff's statements about symptoms and limitations.

21 Dated this 30th day of May 2025.

22 

23 Theresa L. Fricke
 24 United States Magistrate Judge